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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-584

UNITED STATES OF AMERICA for the Use of JAMES SINCLAIR, and JAMES SINCLAIR,

Petitioners,

vs.

THE HANOVER INSURANCE COMPANY, a corporation; GAYLORD L. CAMPBELL; TERRY WALTER; and THOMAS CHARLES KUPFERER, JR.,

Respondents.

Petitioners' Reply to Opposition Memorandum of the Hanover Insurance Company.

JAMES SINCLAIR,
2305 Park Avenue,
Detroit, Michigan 48201,
Petitioner Pro Se.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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I

This Case Concerns Issues of Both Public Importance and Prospective Nature and Therefore Warrants Grant of Certiorari.

28 U.S.C. Sec. 564(c) stated:

> "A person injured by a breach of a United States marshal's bond may sue thereon, in his own name, to recover his damages. Such an action shall be commenced within six years after the right accrues, but a person under legal disability may sue within three years after the removal of his disability. After judgment, the marshal's bond shall remain as security until the whole penalty has been recovered."

Hanover's memorandum in opposition page 3 states that their bond extended "to midnight, December 31, 1973". Therefore for six years thereafter, through 1979, this bond could be sued upon by all and sundry parties injured by marshals, and even in later years for "a person under legal disability". Hanover did not dispute the Petition for Certiorari (pages 6 and 7) to the effect that this bond covers *93* Marshals nationwide for over $3,000,000.00 for airport search abuse so prevalent that an exclusionary rule has been legislated!

This shows both "Prospective Nature" and wide "Public Importance" of this case.

The statute referred to by Hanover terminating the purchasing of future surety bonds saved to the United States all rights on existing bonds. Further, no insurance company which has previously been paid its premium can be heard to argue (nor did Hanover) that it is entitled to unconstitutional impairment of its contractual obligations to intended third-party beneficiaries or to be unjustly enriched by refusing payment to a person suing in the name of the United States for his own Use as permitted by *United States v. Davidson,* 25 Fed. Cases 771, Case # 14,921 (1864). The new statute provides for injuries after its effective date to be paid for by the federal government; the basic public policy is thus for payment in one way or another of judgments for damages done by marshals.

Another issue is the Second Question presented for review in the petition for writ of certiorari (pages i and 2 and 7). The question of the liability of the Marshal for his deputy has been of public importance for over 100 years, and will continue to be so as

long into the future as there are United States courts themselves, as the Marshal works for these courts.

Further, the bond preceding that bond written by Hanover is also still open for suit, even without considering the tolling procedures. This leaves at least one other insurance company affected by this case. These bonds further cover much more than airport cases, and therefore many more citizens need these bonds to recover on property and personal causes of action.

Finally, it is important to preserve Constitutional rights, and to encourage suit to assert said rights before they vanish from disuse; if suit were a waste of money because the bonding company had the only money and was to be improperly dismissed from the suit, few could sue to assert their Constitutional rights.

II

Hanover Admits the Judgment Should Be Reversed.

By its failure to deny Petition page 6 that the bond stated: "A person . . . may sue thereon in his own name", Hanover admits the Court of Appeals erred in holding petitioner could *not* sue. Hanover *does* say the bond *also* indemnifies the United States of America, but no one ever questioned that the United States could also sue on the bond.

As expressly predicted in the 3rd paragraph on page 5 of the Petition, Hanover has failed to state *any* decisions in opposition to the decisions cited in the Petition. The thrust of Hanover's specious argument appears to be that Hanover should be given the benefit of the grievous error in fact of the Court of Appeals because said court relied on the chance that this Court would not review the case as not important enough.

It could well be argued that the principle of supervising the operation of the lower courts of the federal system is itself of such Public Importance and of Prospective Nature so that some decisions of the Court of Appeals which are so unsupportable as neither it, nor Hanover here, can cite one decision in support, should be summarily reversed merely to keep the lower courts alert to their duty and to their being supervised under Supreme Court Rule 19(1.)(b) (phrase 5, among others).

December, 1976.

Respectfully submitted,

JAMES SINCLAIR,
Petitioner Pro Se.